

Filed 8/8/19 In re Sonya Y. CA2/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re SONYA Y., a Person Coming  
Under the Juvenile Court Law.

B291924  
(Los Angeles County  
Super. Ct. No. 18CCJP01241)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

M.Y.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles  
County. Natalie Stone, Judge. Affirmed.

Roni Keller, under appointment by the Court of Appeal, for  
Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Kim Nemoy, Principal Deputy County Counsel, for Plaintiff and Respondent, Los Angeles County Department of Children and Family Services.

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M.Y. (father) appeals the juvenile court's exercise of dependency jurisdiction over his daughter, asserting that the court erred in not continuing the jurisdictional hearing at which father did not appear. Because father had notice of the hearing, because father's counsel argued on his behalf at the hearing, and because father has yet to point to any information that was not before the court at that hearing, we conclude that the juvenile court did not abuse its discretion in not continuing the hearing and also that the absence of a continuance was not prejudicial. Accordingly, we affirm.

## **FACTS AND PROCEDURAL BACKGROUND**

### **I. Facts**

Tori W. (mother) and father have one child together, Sonya Y. Sonya was born in August 2017. Mother has an older child with another man, now-11-year-old Zoe W.

In January 2018, mother and father were engaged in a verbal argument. Zoe stepped between the two, and struck father with her hand. To keep Zoe from further attacking father, mother grabbed Zoe and pinned her to the ground. Father video recorded the last 10 seconds of the altercation—that is, the portion where mother had Zoe pinned.

This was not the first altercation in father's and mother's tumultuous relationship. Since they met in 2015 and moved in together in October 2017, father had on three occasions kicked mother out of their apartment (including once when she was

eight months pregnant with Sonya), father had jabbed mother in the arm with a metal pole, and mother had twice applied for and obtained domestic violence restraining orders against father.

Sonya came to the attention of the Los Angeles County Department of Children and Family Services (Department) when father called to report mother's alleged abuse of Zoe, claiming that he had video showing mother pinning Zoe down and "punching Zoe with closed fists," and reporting that mother had threatened that father would have "hell to pay" if he showed the video to anyone.

## **II. Procedural Background**

After investigating father's report and speaking with mother and Zoe, the Department in February 2018 filed a petition asking the juvenile court to exert dependency jurisdiction over Zoe and Sonya due to mother's and father's "history of engaging in domestic violence." Specifically, the Department alleged that Zoe had "intervened during [the January 2018] confrontation between the mother and . . . father and the mother pinned the child to the ground," that "Zoe has been frequently exposed to verbal altercations between mother and . . . father," that mother "failed to protect the children by allowing . . . father to reside in the children's home and to have unlimited access to the children," and that "[s]uch violent conduct on the part of the . . . father against . . . mother and . . . mother's failure to protect the children endanger the children's physical health and safety and place the children at risk of serious physical harm, damage, [and] danger . . ." The Department further alleged that

jurisdiction was appropriate pursuant to Welfare and Institutions Code section 300, subdivisions (a), (b) and (j).<sup>1</sup>

On February 26, 2018, the juvenile court detained the children from father's custody and placed them in the home of mother. Father was present, and was ordered to return to court for the jurisdictional and dispositional hearing on May 1, 2018.

Father did not appear at the May 1, 2018, hearing set for disposition. Father's counsel requested a "very short continuance to see why [father is] not present," but the juvenile court refused after confirming that father had, at the prior hearing, been ordered to appear on May 1. The court granted father's counsel's request to continue the dispositional hearing. The court asked father's counsel if she was going to present evidence, and counsel replied she would present "argument." After entertaining argument, the court sustained jurisdiction over Zoe and Sonya under section 300, subdivision (b), but struck the allegations under subdivisions (a) and (j). The court set the dispositional hearing for June 19, 2018.

Father appeared in court on June 19, but the court continued the dispositional hearing until August 6, 2018. Father informed the court that he "didn't make it to court" on May 1 "because of medical issues" that had put him "in the hospital." Neither father nor his counsel asked the court to vacate or revisit the court's jurisdictional findings.

The court held the dispositional hearing on August 6, 2018. Father testified, asserting that he never got notice of the May 1, 2018 jurisdictional hearing, that he had never before hit mother or Zoe, and that mother (and ostensibly Zoe) had lied about what

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

happened during the January 2018 incident prior to the video clip. The juvenile court removed Sonya from father and placed her in the home of mother and ordered reunification services for father.

Father filed this timely appeal.

### **DISCUSSION**

Father argues that the trial court erred in denying his counsel's request for a continuance of the jurisdictional hearing. A juvenile court may continue a hearing "upon a showing of good cause" and that the continuance is not "contrary to the interest of the minor." (§ 352, subds. (a)(1) & (a)(2).) Because the court must "give substantial weight to [the] minor's need for prompt resolution of his or her custody status, the need to provide children with stable environments, and the damage to a minor of prolonged temporary placements" (§ 352, subd. (a)(1)), continuances are "discouraged" and "difficult to obtain." (*In re Emily D.* (2015) 234 Cal.App.4th 438, 448; *Jeff M. v. Superior Court* (1997) 56 Cal.App.4th 1238, 1242.) We review the denial of a continuance for an abuse of discretion (*In re Giovanni F.* (2010) 184 Cal.App.4th 594, 605), and a wrongful denial warrants reversal only if it was prejudicial—that is, if a continuance would have made a "different result" reasonably probable (*In re Gerald J.* (1991) 1 Cal.App.4th 1180, 1187).

The juvenile court's denial of father's continuance request was neither an abuse of discretion nor prejudicial. The court did not abuse its discretion because father never established "good cause" for the continuance. All father's counsel offered was the mere fact of father's absence. But it is long settled that "[t]he mere absence of a party standing alone is insufficient to compel the court to grant a continuance." (*Nahas v. Nahhas* (1955) 135

Cal.App.2d 440, 442; *Sheldon v. Landwehr* (1911) 159 Cal. 778, 781 [“it has never been held in this court that the unavoidable absence of a party necessarily compels the court to grant a continuance”].) Any error in the denial was not prejudicial in any event. Father’s eventual testimony at the dispositional hearing mirrored what was reported as his statements in the Department’s reports, which the court considered during the jurisdictional hearing—namely, father’s statement that mother (and not he) had been the abusive parent during the January 2018 incident. Accordingly, father’s absence from the jurisdictional hearing did not deprive the court of any new or different information. (Cf. *In re John M.* (2006) 141 Cal.App.4th 1564, 1571-1572 [juvenile court abused its discretion in denying continuance of dispositional hearing to obtain a home evaluation that would have provided additional information necessary for proper placement].)

Father resists these conclusions with what boil down to three arguments.

First, he argues that the juvenile court abused its discretion in denying a continuance of the jurisdictional hearing because Sonya’s “interests” favored a continuance given that father was asking for a “brief” continuance, this was father’s first such request, and Sonya was placed in mother’s home (rather than a stranger’s). Not only has father forfeited these fact-based arguments by not making them to the juvenile court (*In re Julien H.* (2016) 3 Cal.App.5th 1084, 1089), but they pertain solely to whether a continuance would be “contrary to the interest of the minor.” They do not speak to the complete absence of “good cause” for the continuance.

Second, father contends that the denial of the continuance was prejudicial because the jurisdictional finding against him will have lasting effects insofar as it might affect the juvenile court's custodial placement of Sonya upon termination of jurisdiction and will be included as part of his prior dependency history in any future dependency proceedings. This is true, but irrelevant. The pertinent question is not whether the jurisdictional ruling in this case might have lasting effects, but whether the denial of a continuance in this case had any effect on that jurisdictional ruling. It did not, for the reasons outlined above.

Lastly, father asserts that the juvenile court's denial of a continuance deprived him of due process. While due process provides substantive and procedural safeguards to protect a parent's "liberty interest in the family unit" (*Adoption of Kay C.* (1991) 228 Cal.App.3d 741, 748, citing *Moore v. East Cleveland* (1977) 431 U.S. 494, 499), father's due process rights were not violated in this case. At bottom, due process secures the right to notice and the opportunity to be heard. (*Today's Fresh Start, Inc. v. Los Angeles County Office of Education* (2013) 57 Cal.4th 197, 212 ["The essence of due process is the requirement that "a person in jeopardy of serious loss [be given] notice of the case against him and opportunity to meet it.""], quoting *Mathews v. Eldridge* (1976) 424 U.S. 319, 348.) Despite father's testimony to the contrary, he had notice of the May 1 jurisdictional hearing. What is more, he was heard through his counsel, who appeared and argued on his behalf. Because "appearance by an attorney is sufficient and equally effective" "at a civil proceeding," including a dependency proceeding, father's absence did not violate due process. (*In re Dolly D.* (1995) 41 Cal.App.4th 440, 445.)

**DISPOSITION**

The orders are affirmed.

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\_\_\_\_\_, J.  
HOFFSTADT

We concur:

\_\_\_\_\_, Acting P.J.  
ASHMANN-GERST

\_\_\_\_\_, J.  
CHAVEZ